

REPRESENTATIVES FOR PETITIONER: Bowers, Harrison, Kent and Miller  
Mr. Timothy J. Hubert  
Mr. Cedric Hustace

REPRESENTATIVES FOR RESPONDENT: Cheryl Musgrave  
Khris Seger

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

Catholic Diocese of Evansville,	)	Petition No.: <i>see below</i>
	)	
Petitioner	)	County: Vanderburgh
	)	
v.	)	Township: Pigeon
	)	
Vanderburgh County Board of	)	Parcel No.: <i>see below</i>
Review,	)	
	)	
Respondent	)	Assessment Year: 1996

Petition Numbers*:	Original Petition Numbers:	Parcel Numbers:
82-029-96-2-8-00074	95-822-74	112020663
82-029-96-2-8-00076	95-822-76	112020662
82-029-96-2-8-00077	95-822-77	112020664
82-029-96-2-8-00078	95-822-78	112020665
82-029-96-2-8-00079	95-822-79	112020666
82-029-96-2-8-00080	95-822-80	112020667
82-029-96-2-8-00081	95-822-81	112020668
82-029-96-2-8-00082	95-822-82	112020669
82-029-96-2-8-00083	95-822-83	1120206610
82-029-96-2-8-00084	95-822-84	1120206611

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Appeal from the Final Determination of  
Vanderburgh County Property Tax Assessment Board of Appeals

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\* The petition numbers have been updated and now reflect the proper year of appeal.

**May 21, 2003**

**FINAL DETERMINATION**

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the “Board”.

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Issue**

1. The issue presented for consideration by the Board is:  
*Whether the real property owned by the Catholic Diocese of Evansville qualifies for property tax exemption as property used for religious purposes pursuant to Ind. Code §§ 6-1.1-10-16 or 6-1.1-10-36-3.*

**Procedural History**

2. Pursuant to Ind. Code § 6-1.1-11-3, the Catholic Diocese of Evansville (Petitioner) filed Applications for Property Tax Exemption, Form 136, with the Vanderburgh County Auditor. The Form 136 applications were filed on May 14, 1996. The Vanderburgh County Board of Review (County Board) denied the applications and gave the Petitioner notice on March 27, 1997.
3. Pursuant to Ind. Code § 6-1.1-11-7, Mr. Timothy J. Hubert with Bowers, Harrison, Kent and Miller, filed Form 132, Petitions for Review of Exemption, on behalf of the Catholic Diocese of Evansville, petitioning the Board to conduct an administrative review of the above petitions.

## Hearing Facts and Other Matters of Record

4. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on March 31, 1998 before Hearing Officer Kim Chattin.

5. The following persons were present at the hearing:

For the Petitioner:

Mr. Timothy J. Hubert, Bowers, Harrison, Kent and Miller

Mr. Cedric Hustace, Bowers, Harrison, Kent and Miller

For the Respondent:

Ms. Cheryl Musgrave, Vanderburgh County Assessor

Mr. Khris Seger,

6. The hearing held on March 31, 1998, covered a total of seventeen (17) petitions. The Petitioner submitted a total of forty-eight (48) exhibits and the Respondent submitted a total of four (4) exhibits. Only the testimony and exhibits relevant to these petitions will be addressed in these findings.

7. At the hearing, the subject Form 131 petitions were made a part of the record and labeled Board Exhibit A. The Notices of Hearing were made a part of the record as Board Exhibit B. In addition, the following exhibits were submitted to the Board:

Petitioner's Exhibit 1 – A letter from the Internal Revenue Service (IRS) dated July 18, 1997 regarding 501(c)(3) status for the Petitioner.

Petitioner's Exhibit 2 – A letter from the IRS dated July 25, 1997 regarding an IRS group ruling for Catholic organizations.

Petitioner's Exhibit 3 – Portions of the March 6, 1997 Vanderburgh County Board of Review minutes.

Petitioner's Exhibit 4 – Portions of the April 3, 1997 Vanderburgh County Board of Review minutes.

Petitioner's Exhibit 5 – A copy of *Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E. 2d 954 (Ind. Tax 1997).

Petitioner's Exhibit 6 – A copy of a document containing a discussion of “Doctrinal Objections” (exception for filing Form 136) and “Predominant Use Test” (predominate use for religious purposes).

Petitioner's Exhibit 7 – *The Yearbook of the Catholic Diocese of Evansville, 1996 Edition*.

Petitioner's Exhibit 40 – A copy of the December 20, 1996 County Board minutes.

Petitioner's Exhibit 41 – A copy of the February 6, 1997 County Board minutes.

Petitioner's Exhibit 42 – A copy of the March 6, 1997 County Board minutes.

Petitioner's Exhibit 43 – A copy of the March 6, 1997 County Board minutes.

Petitioner's Exhibit 44 – Petitioner's Brief for Parcel 11-020-20-066-002 through Parcel 11-020-20-066-011.

Petitioner's Exhibit 45– A copy of a lease agreement between Gerald Gettelfinger, Bishop of the Catholic Diocese of Evansville, and Welborn Clinic dated November 9, 1994.

Petitioner's Exhibit 46 – A copy of a letter dated March 27, 1998, from Thomas J. Kimpel to Cederic Hustave regarding the use of certain property by Welborn Baptist Hospital.

Petitioner's Exhibit 47 – An affidavit from Rev. Stephen P. Lintzenich regarding the use of certain property by Welborn Baptist Hospital.

Petitioner's Exhibit 48 – A copy of an excerpt from the Federal Tax Guide Reports, Vol. 73, No. 49, September 7, 1990 with a section highlighted discussing revenue derived through the operation of a parking lot.

Respondent's Exhibit 4 – A memo from Cheryl Musgrave to Kimberly Chattin regarding the following Petition Numbers: 95-822-74; 95-822-76; 95-822-77; 95-822-78; 95-822-79; 95-822-80; 95-822-81; 95-822-82; 95-822-83; and 95-822-84.

## **Jurisdictional Framework**

8. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

## **State Review and Petitioner's Burden**

9. The State does not undertake to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
10. The petitioner must submit 'probative evidence' that adequately demonstrates the alleged error. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
11. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
12. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
13. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case.' See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas*,

*Inc. v. State Bd. of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

### **Constitutional and Statutory Basis for Exemption**

14. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, § 1 of the Constitution of Indiana.
15. Article 10, §1 of the State Constitution is not self-enacting. The General Assembly must enact legislation granting the exemption.
16. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemptions. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how property is used, but on how money is spent. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E. 2d 810 (Ind. Tax 1996) (501(c)(3) status does not entitle a taxpayer to tax exemption). For property tax exemption, the property must be predominantly used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

### **Basis of Exemption and Burden**

17. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.

18. The courts of some states construe constitutional and statutory tax exemptions liberally, some strictly. Indiana courts have been committed to a strict construction from an early date. *Orr v. Baker* (1853) 4 Ind. 86; *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 669 N.E. 2d 199 (Ind. Tax 1996).
19. All property receives protection, security, and services from the government, e.g., fire and police protection and public schools. This security, protection, and other services always carry with them a corresponding obligation of pecuniary support – taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners* (NAME), 671 N.E. 2d 218 (Ind. Tax 1996). Non-exempt property picks up a portion of taxes that the exempt property would otherwise have paid, and this should never be seen as an inconsequential shift.
20. This is why worthwhile activities or noble purpose is not enough for tax exemption. Exemption is justified and upheld on the basis of the accomplishment of a public purpose. *NAME*, 671 N.E. 2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850, 854 (Ind. Tax 1990)).
21. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statute under which the exemption is being claimed. *Monarch Steel*, 611 N.E. 2d at 714; *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).
22. As a condition precedent to being granted an exemption under the statute (Ind. Code § 6-1.1-10-16), the taxpayer must demonstrate that it provides “a present benefit to the general public...sufficient to justify the loss of tax revenue.” *NAME*, 671 N.E. 2d at 221 (quoting *St. Mary’s Medical Center of Evansville, Inc. v. State Board of Tax Commissioners*, 534 N.E. 2d 277, 279 (Ind. Tax 1989), *aff’d* 571 N.E. 2d (Ind. Tax 1991)).

## Discussion of Issue

Whether the real property owned by the Catholic Diocese of Evansville qualifies for property tax exemption as property used for religious purposes pursuant to Ind. Code §§ 6-1.1-10-16 or 6-1.1-10-36-3.

23. The Petitioner argues that the subject property is used exclusively by non-profit entities. Even though their lease is with the Clinic (a for profit entity), the Hospital (a tax exempt entity) uses the subject property. The Petitioner also argues the subject property is predominately used by the Petitioner. The subject property is available for use by the Petitioner 66% of the time. The Petitioner cites to *Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners*, 686 N.E. 2d 254 (Ind. Tax 1997).
24. The Respondent contends that the during the times the subject property is used, it is predominately used by the clinic. The Respondent also cites to Ind. Code § 6-1.1-10-37(b), stating that the property is leased to a for profit entity.
25. The applicable rules governing this Issue are:
- Ind. Code § 6-1.1-10-37(b) states:**
- If real property that is exempt from taxation is leased to another whose property is not exempt and the leasing of the real property does not make it taxable, the leasehold estate and the appurtenances to the leasehold estate shall be assessed and taxed as if they were real property owned by the lessee or his assignee.
- Ind. Code § 6-1.1-10-36.3(a) states:**
- For purposes of this section, property is predominately used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more of those purposes during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property.
26. The real property subject to this appeal is a paved parking lot located on Oak Street, Evansville, Pigeon Township, Vanderburgh County. The paved parking lot is comprised of 10 parcels of land adjacent to St. Mary's Catholic Church. The assessment year for which exemption is sought is 1996 with property taxes due and payable in 1997. The

County Board found the property to be 100% taxable. The Hearing Officer did not view the subject property.

27. The Petitioner leases the parking lot to Welborn Clinic (Clinic), a for profit entity. The lease agreement allows the Clinic use of the subject property Monday through Friday from 6:00 a.m. and 5:30 p.m., excluding certain holidays. The Clinic pays a monthly rental of \$1,894.20 to the Petitioner. (Petitioner's Exhibits 44, 45, and 47).
28. The terms of the lease agreement allow the Clinic use of the subject property 34% of the time, or 57.5 hours per week out of a total of 168 hours in a week. The remaining 66% of the time the subject property is available for use by the Petitioner.
29. All rental income is used to defray the expense of upkeep of the St. Mary's parish property, but is insufficient to cover all such expenses. (Petitioner's Exhibit 44).
30. The Clinic has entered into an agreement with Welborn Hospital (Hospital), an exempt entity. The agreement between the Petitioner and the Clinic allows the Clinic to lease/sublet the subject property to Welborn Hospital. The Clinic and the Hospital entered into an agreement to swap parking areas. The Hospital uses the subject property and in return, the Clinic uses a Hospital parking lot.

#### Analysis of Issue

31. The subject property is leased to a taxable entity (the Clinic). While the Clinic has sublet the subject property to a tax exempt entity, the fact remains that the lease agreement is with a taxable entity (the Clinic). The sublet arrangement between the Clinic and the Hospital benefits both the Clinic and the Hospital who swapped parking areas for convenience.
32. The Petitioner's situation is different from that of Sangralea in the case of *Sangralea Boys Fund v. State Board of Tax Commissioners*, 686 N.E. 2d 954 (Ind. Tax 1997).

Sangralea leased its property to not-for-profit entities. The Petitioner leases to a taxable entity.

33. Further, the Petitioner has not shown how the use and occupation of the subject property by the Clinic (lessee) is in furtherance of the Petitioner's tax exempt purpose. *Sangralea*, 686 N.E. 2d 954, 959 (Ind. Tax 1997).
34. The Petitioner also argued that because the subject property is available for use by the Petitioner 66% of the time, the predominate use is by the Petitioner.
35. In order to meet the predominate use test found in Ind. Code § 6-1.1-10-36.3, the property must be used or occupied for the stated purpose more than 50% of the time that it is used or occupied. While the Petitioner contends that the property is available for its use 66% of the time, it should be noted that the property is available from 5:30 p.m. to 6:00 a.m. Monday through Friday, and all day Saturday and Sunday. It cannot be assumed that the church uses or occupies the property the entire time when it is not used by the lessee. There was no evidence submitted to show how much time the Petitioner actually used or occupied the property.
36. The Petitioner has not shown that the predominate use of the property is for its stated purpose.
37. The Petitioner has not met its burden of showing that the subject property qualifies for exemption.

### **Summary of Final Determination**

*Whether the real property owned by the Catholic Diocese of Evansville qualifies for property tax exemption as property used for religious purposes pursuant to Ind. Code §§ 6-1.1-10-16 or 6-1.1-10-36-3.*

38. The Petitioner has not met its burden of showing the subject property qualifies for exemption. The subject property is 100% taxable.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

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Chairman, Indiana Board of Tax Review

### **IMPORTANT NOTICE**

#### **- APPEAL RIGHTS -**

**You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.**